

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

Writ Petition No. 19763 of 2005

-

Dated: 30th December, 2005

Between:

1. Smt.Sumitra Varma W/o.Sri Lalchand Varma and another.

..... PETITIONERS

AND

1. The Commissioner, Survey and Land Records,

Nampally, Hyderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.19763 of 2005

ORDER:

This writ petition has been filed by the petitioners, who are two in number, assailing the action of the Commissioner, Municipal Corporation of Hyderabad-4th respondent in not receiving the application for building permission.

2. The petitioners claim that they are the owners and possessors of house bearing No.7-1-87/A(part) admeasuring 107 square yards or 89.49 square meters with total built-up area of 668 square feet having purchased the same from Premavathi under registered sale deed dated 15.09.2004. The Commissioner, Municipal Corporation of Hyderabad-4th respondent has refused

to receive the building permission application on the ground that the petitioners have not filed 'No Objection Certificate' issued by the revenue authorities. The petitioners were further advised to obtain Town Survey Land Record (TSLR) Certificate from the office of the respondents 1 to 3. The petitioners made applications to the respondents 1 and 2 for issuance of copy of TSLR Certificate in respect of the house claimed by them. The respondents 1 and 2 issued memo vide Ref.Dis. No.A3/TS/657/2005, dated 06.08.2005, stating that the house bearing No.7-1-87/A(part) is not recorded in town survey records. It is further informed to the petitioners that in the town survey land records, the land in question is recorded as *G.Abadi*. According to the petitioners, at the time of the survey, the land was vacant and therefore, entry came to be recorded as *G.Abadi* as per G.O.Ms.No.1039 Revenue [R] Department, dated 14.09.1972. Subsequent to the survey, constructions came to be made and the said constructions came to be assessed for tax by the authorities concerned. Because of the memo issued by the respondents 1 and 2, the 4th respondent is not inclined to receive the application of the petitioners for building permission. To know the grievance of the petitioners, I deem it appropriate to refer paras.7 and 8 of the writ affidavit and they are thus:

7.Because of the impugned Memo, the respondent No.4 is not inclined to receive application for construction permit. It is also submitted that TSLR is not a sole guiding factor to decide the right of parties as held by this Hon'ble Court in case reported in 2001(3) ALT page 200.

8.It is further submitted that the respondent No.4 has no legal right to refuse to accord construction permit merely because of the impugned memo. The provisions of Municipal Corporation of Hyderabad M.C.H. Act do not make it mandatory that a No Objection Certificate has to be obtained to get sanction construction permit. The demand of respondent No.4 is absolutely illegal and arbitrary. Hence, the writ petition."

3. 4th respondent filed counter-affidavit. It is stated in the counter-affidavit that the property located in T.S.No.16, Block-D, Ward No.107 of Bholakpur village, Secunderabad Mandal, has been recorded as *G-Abadi* land in Column No.2 of T.S.L.R. Therefore, 4th respondent-Corporation insisted the petitioners to submit 'No Objection Certificate' along with the application for building permission with a view to verify *prima facie* title and to avoid further litigation. Para.4 of the counter-affidavit needs to be noted and it is thus:

“4.It is submitted that the petitioners themselves are questioning with regard to the status of land as mentioned in the para No.5 wherein it is clearly stated that the property is located T.S.No.16, Block-D, Ward No.107 of Bholakpur Village, Secunderabad Mandal, under Column No.2 of Town Survey Land Register, it is recorded as G.Abadi. Therefore, the respondent corporation is insisting upon the parties to submit NOC along with the application for building permission with a view to verify the prima facie title and to avoid the delay in verifying the prima facie title and to avoid further litigation and to know the status of the land. Even as per Section 429 of the Hyderabad Municipal Corporation Act read with the building bye laws, the Commissioner, Municipal Corporation of Hyderabad is empowered to ask the petitioners to produce any document in support of the title of the property, if it is required to be produced in the opinion of the Commissioner. The action of the 4th respondent in insisting to produce NOC from the Joint Collector is as per the provisions of Hyderabad Municipal Corporation Act and well within the purview of the Commissioner or any other authorized officer. There are no merits in the writ petition and the same is liable to be dismissed.”

4. Heard learned counsel appearing for the petitioners and learned Standing Counsel appearing for the 4th respondent.

5. Learned counsel appearing for the petitioners submits that mere entry in the T.S.L.R. cannot be a ground to reject the building permission application of the petitioners and therefore, the action of the 4th respondent in not accepting the application for building permission based on the entry in the T.S.L.R. is not legal and proper. In support of his submission, reliance has been placed on the decision of our High Court in ***Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District and another***.

6. Learned Standing Counsel appearing for the 4th respondent supported the action of the 4th respondent in not entertaining the application of the petitioner for building permission.

7. In ***Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District and another*** (supra), it has been held that the entry in the T.S.L.R. is not a sole guiding factor to decide the rights of parties in the land. In view of the settled position of law, the action of the 4th respondent in not entertaining the

application of the petitioners for building permission based on the entry in the T.S.L.R. cannot be justified.

8. Accordingly, the writ petition is disposed of directing the 4th respondent to entertain the application of the petitioners for building permission and pass appropriate orders in accordance with the provisions of the Hyderabad Municipal Corporation Act and the Rules governing thereto. No costs.

B.SESHASAYANA REDDY, J.

Date: 30th December, 2005.

CS